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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,967	04/12/2005	Alistair Royse	3029-000083/NP	8471
27572 7590 09/23/2008 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER				
MAL HAO'D				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
09/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/511,967

**Applicant(s)**

ROYSE ET AL.

**Examiner**

HAO D. MAI

**Art Unit**

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-9, 12, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-9, 12, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 6-9 and 12 is withdrawn in view of the new ground(s) of rejection as follow.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 3, 5-6, and 8, are rejected under 35 U.S.C. 102(b) as being anticipated by Daniel (5,297,538).**

**Regarding claim 6,** Daniel discloses a surgical retractor 1 (Figs. 1-2) having two arms 2/12 and 4/12 each adapted to carry a blade 64 capable of engaging with one side of an incision. The two arms are being connected by a pivot 6 at one end portion such that the arms can be pivoted between a close position and an adjustable open position in which the arms define a substantially V-shaped configuration in which the blades are capable of maintaining the sides of the incision in inclined relation. The retractor further comprises means 30/32 for retaining the arms in the open position. The blade 64 is shown to have a mounting portion 14 that is engageable on the arm so as to at least partially surround the arm and displaceable longitudinally along the arm. The arm is shaped to provide a series of abutment edges 56 spaced in the longitudinal direction of the arm and engageable with a part of the mounting portion 14 of the blade so as to lock the mounting portion to the arm against displacement from

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a selected position along the arm at least in one longitudinal direction. The arm is of polygonal cross-section (rectangular at 12).

**As to claim 3**, Daniel discloses the abutment edges 56 to be a series of grooves or notches (serrations) spaced along the arm (Fig. 2). **As to claims 5 and 8**, note the exterior rectangular shape of the arm 12 complementing the rectangular interior shape of the mounting portion 14; the grooved four inner corner of the rectangular inner surface of the mounting portion 14 engage with outer corner portions of the rectangular cross-section of the arm 12, locking the mounting portion to the arm in a selected angular position against rotation about the axis of the arm (best shown in Fig. 6).

4. **Claims 3-9, 12, and 20-21, are rejected under 35 U.S.C. 102(b) as being anticipated by Royse (WO 01/06934).**

**Regarding claims 6 and 3**, Royse shows a retractor comprising two arms 4 and 6 being connected by a pivot 8 at one end portion such that the arms can be pivoted between a closed position and an open positioning which the arms define a V-shaped configuration (Fig. 1). The retractor also comprises means 18 for retaining arms in the open position. The arms provide a series of abutment edges (notches form at the abutment edges of the sleeves) 40, 46 spaced in the longitudinal direction of the arm for engaging the mounting portion 48 of a retractor blade 16. Royse also discloses the arms alternatively can be of polygonal cross-section, such as a rectangular cross-section (page 7 lines 10-18). **As to claims 4, 7, and 9**, the mounting portions of the blades are able to freely rotate about the axis of the arm; and **as to claims 5 and 8**, the blades can be locked to the arm in a selected angular position (page 5 lines 3-5, 22-25).

**Regarding claim 12**, Royse shows all the claimed elements as described in the above paragraph. **As to claims 20-21**, note the toothed rack 2 and driving pinion 28/32.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniel (5,297,538) in view of Bogert et al. (4,796,661).**

Daniel discloses the invention substantially as claimed. The retractor of Daniel has a locking device of rack 30 with serrations 32 mating with serrations 36 on the enlarged portion 40 (Figs. 1 and 3) so as cause movement of the two arms 2 and 4 via pivot 6 and lock the two arms relative to each other. Daniel fails to disclose a mechanism of toothed rack and driving pinion.

Bogert et al. disclose a forceps/retractor having two arms 10 and 20 connected via pivot 30; and a locking mechanism comprised of a toothed rack 100 carried by arm 10 at an end portion thereof remote from pivot 30 and a driving pinion 210/215 carried by arm 20; the pinion being engaged with the rack so that driving rotation of the pinion would cause opening movement of the two arms (Fig. 1 and 7-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Daniel by replacing the serration mechanism with the toothed rack and pinion mechanism as taught by Bogert et al. as a suitable alternative mechanism while still obtaining the same and predictable results.

***Response to Arguments***

7. Applicant's arguments filed 06/03/2008 have been considered but are moot in view of the new ground(s) of rejection.

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***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/  
Examiner, Art Unit 3732

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732